MALAYSIA

TRADE SUMMARY

In 1999, the U.S. trade deficit with Malaysia was nearly $12.4 billion, an increase of $2.3 billion from the U.S. trade deficit of just over $10 billion in 1998. U.S. merchandise exports to Malaysia were $9.1 billion, an increase of $126 million (1.4 percent) from the level of U.S. exports to Malaysia in 1998. Malaysia was the United States' 17th largest export market in 1999. U.S. imports from Malaysia were $21.4 billion in 1999, an increase of $2.4 billion (12.8 percent) from the level of imports in 1998. The stock of U.S. foreign direct investment (FDI) in Malaysia in 1998 was $6.2 billion, a five percent decrease from the level of U.S. FDI in 1997. U.S. FDI in Malaysia is concentrated largely in the manufacturing, energy and financial sectors.

IMPORT POLICIES

Tariffs are the main instruments used to regulate the importation of goods in Malaysia. However, 17 percent of Malaysia's tariff lines (principally in the construction equipment, forestry, logging, agricultural, mineral, and motor vehicle sectors) are also subject to onerous import licensing designed to protect import-sensitive or strategic industries. Although the average applied MFN tariff rate has declined to approximately 9.45 percent, duties applicable to goods for which there is significant local production are often higher. For example, 14.2 percent of tariff lines in Malaysia's tariff schedule have rates over 20 percent, 23.6 percent of tariff lines have rates over 15 percent, and several lines have rates well over 100 percent, such as automobiles and motorcycles.

The level of tariff protection is generally lower on raw materials and increases for those goods with value-added content or which undergo further processing. Malaysia has been an active participant in multilateral and regional trade fora such as the World Trade Organization (WTO) and the Asia-Pacific Economic Cooperation (APEC) forum. Malaysia implemented the WTO Customs Valuation Agreement on schedule effective January 1, 2000.

Import Restrictions on Motor Vehicles

Malaysia maintains several measures to protect the local automobile industry, including high tariffs and an import quota and licensing system on motor vehicles and motor vehicle parts. In order to qualify for certain tax/tariff incentives for domestic production, companies are required to satisfy local content requirements of 45 to 60 percent for passenger and commercial vehicles, and 60 percent for motorcycles. Malaysia has requested an extension of these measures pursuant to the WTO Agreement on Trade-Related Investment Measures (TRIMS) (see "Investment Barriers" below). Malaysia has also requested an extension of its commitments under the ASEAN Free Trade Area (AFTA) to reduce tariffs in the auto sector by the year 2000. These restrictions have hampered the ability of U.S. firms to penetrate the Malaysian market.

Malaysia's 1998 fiscal year budget increased tariffs on a range of motor vehicles, and these rates continue to apply. Although the specific tariff depends on engine capacity, in general, the currently applied tariffs rates for completely built-up (CBU) and completely knocked-down (CKD) vehicles are as follows: 140-300 percent for automobiles (CBU); 80 percent for automobiles (CKD); 42-140 percent for vans (CBU); 40 percent for vans (CKD); 60-200 percent for four-wheel drive/multipurpose vehicles (CBU); 40 percent for four-wheel drive/multipurpose vehicles (CKD); 80-120 percent for motorcycles (CBU); and 30 percent for motorcycles (CKD).

Restrictions on Construction Equipment

In October 1996, Malaysia raised tariffs on construction equipment from five to twenty percent. In October 1997, Malaysia again raised tariffs and imposed an onerous licensing regime affecting imports of heavy construction equipment. In addition, the initial capital allowance tax deduction for imported heavy equipment was reduced from twenty to 10 percent in the first year, and the annual allowance was reduced from between 12 and 20 percent to 10 percent. Current applied tariffs rates for construction equipment are as follows: five percent for heavy machinery and equipment; 50 percent for multi-purpose vehicles; 50 percent for special purpose vehicles; and 10 to 30 percent for construction materials.

Duties on High-Value Food Products

In the 2000 budget, the government proposed abolishing duties on 43 food categories. The import duties on 136 categories of food products (fresh, dried, and processed) have been reduced from between 5 and 20 percent to between two and 12 percent. The government significantly reduced import duties on prepared cereals, prepared vegetables, prepared/preserved fruits, nuts, fruit juices, pasta, and various seafood items. However, duties for some processed and high-value products still range between 20 and 30 percent. The applied tariff on soy protein concentrate is 20 percent.

Duties on Alcoholic Beverages

Tariffs on alcoholic beverages were increased in October 1998. Current applied tariff rates are as follows, reflected in Malaysian Ringitt (RM) per decaliter (RM/dal): RM 89 for beer; RM 120 for wine; RM 120 for vermouth; RM 118 for mead; RM 587 for brandy; and between RM 98-100 for liqueurs.

Plastic Resins

In December 1993, Malaysia increased tariffs on some plastic resins from two to thirty percent for a five-year period. In late 1998 the tariff was lowered to 20 percent, however the current tariff rate is still restrictive.

Tariff-Rate Quota for Chicken Parts

Although the government of Malaysia applies a zero import duty on chicken parts, imports are regulated through licensing and sanitary controls. Import levels remain well below the minimum access commitments established during the Uruguay Round.

Float Glass Tariff

Malaysia levies a 60 percent duty on "rectangular-shaped" float glass; although this classification is broadly construed to include glass cut to other shapes approximating a rectangle. The rate for float glass in other shapes is 30 percent. Under the ASEAN Free Trade Area (AFTA) Common Effective Preferential Tariff (CEPT) scheme, imported float glass from other ASEAN countries is subject to a 20 percent tariff.

Rice Import Policy

The sole authorized importer of rice is a government corporation (Bernas) with the responsibility of ensuring purchase of the domestic crop and wide power to regulate imports.

Film and Paper Product Tariffs

Malaysia applies a 25 percent tariff on imported instant print film. In August 1994, the Malaysian government raised tariffs on several categories of imported kraft linerboard (used in making corrugated cardboard boxes) to between 20 and 30 percent, depending on the category. These tariff increases are subject to review every two years and were to be phased out after five years. The 1998 review reduced tariffs to 10 percent for all categories.

GOVERNMENT PROCUREMENT

Malaysia is not party to the plurilateral WTO Government Procurement Agreement.

Malaysian government policy calls for procurement decisions to support national public policy objectives, such as encouraging greater participation of Bumiputras in the economy, transferring technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local companies in the service sector, and enhancing Malaysia's export capabilities. As a result, foreign companies do not have the same opportunity as some local companies to compete for contracts and, in most cases, foreign companies are required to take on a local partner before their bid will be considered. Some U.S. companies have voiced concerns about the non-transparent nature of the Malaysian government's procurement decision-making process.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Malaysia is a member of the World Intellectual Property Organization (WIPO), the Berne Convention for the Protection of Literary and Artistic Works, and the Paris Convention. Malaysia provides copyright protection to all works (including video and sound recordings, and computer software) published in Berne Convention member countries, regardless of when the works were first published in Malaysia.

In January 2000, the Minister of Domestic Trade and Consumer Affairs reaffirmed Malaysia's commitment to "the provision of a strong intellectual property law and a cost-effective intellectual property system." He said that the Government is amending the Patents Act (1983), the Copyright Act (1987), and the Trade Marks Act (1976), as well as enacting new legislation governing layout designs of integrated circuits and geographical indications, in order to comply with the TRIPS Agreement. He also stated that Malaysia is considering acceding to more treaties and conventions under the auspices of WIPO.

In March 1998, the Malaysian Government opened an intellectual property training center to develop and offer programs for government officials, agencies, attorneys, and the judiciary. It is hoped that this training will help to promote consistent pursuit of criminal charges for infringement by government prosecution, and to help resolve the substantial backlog of pending infringement cases in Malaysian courts.

As the number of manufacturing licenses for optical disk (OD) manufacturing facilities has increased, so have piracy rates for copyrighted music and video works. Malaysia's production capacity for OD products far exceeds local demand plus legitimate exports; in fact, pirate OD products believed to have originated in Malaysia have been identified throughout the Asia-Pacific region, North America, South America, and Europe. The Malaysian government is aware of the problem and has expressed its determination to move against illegal operations.

In April 1999, the government created an interagency task force to develop and implement a regulatory regime for optical media production. Legislation to establish a comprehensive legal framework regime for the regulation and licensing of OD manufacturing facilities, which would serve as the backbone of Malaysian efforts to suppress copyright piracy, was scheduled for introduction to Parliament during its fall 1999 session. Unfortunately, consideration of the OD bill, other amendments to existing law necessary to implement Malaysia's TRIPS obligations, and reform of onerous affidavit requirements in the Copyright Act, were delayed by the Prime Minister's dissolution of Parliament in advance of November 29, 1999 elections. While we are encouraged by statements by the Minister of Domestic Trade and Consumer Affairs that enactment of legislation is a top priority, the OD legislation again appears to have encountered difficulty when the government in March 2000 considered modifications to the bill which undermine its effectiveness.

Malaysia will need to expedite enactment of a strong OD regulatory regime, and implement fully and vigorously enforce the new law if it hopes to address domestic OD piracy rates and reverse Malaysia's growing reputation as a regional hub for pirated OD products. For example, according to industry sources, total annual losses from copyright piracy in Malaysia during 1999 are estimated at nearly $290 million; by far the largest figure in the ASEAN region.

USTR conducted an out-of-cycle Special 301 review in late 1999, and announced in December of that year that it decided not to place Malaysia on the Watch List pending passage of new optical disc legislation designed to reduce substantially pirated optical media production and export. Suppressing OD-based digital piracy is consistent with the government's objective to establish the Multimedia Super Corridor (MSC) as a locus of high technology manufacturing and innovation in Asia. Police and legal authorities are generally responsive to requests from U.S. firms for investigation and prosecution of copyright infringement cases. However, despite over 6,000 raids and inspections since April 1999, no persons have been criminally prosecuted for piracy.

SERVICES BARRIERS

Basic Telecommunications

Under the WTO Basic Telecommunications Agreement, Malaysia made limited commitments on most basic telecommunication services and partially adopted the reference paper on regulatory commitments. Malaysia guarantees market access and national treatment for these services only through acquisition of up to 30 percent of the shares of existing licensed public telecommunications operators, and limits market access commitments to facilities-based providers.

Direct Selling

In May 1999, the Malaysian government announced new requirements for the licensing and operation of direct selling companies. These requirements include adherence to a maximum foreign equity level of 30 percent in a locally incorporated company, and provision of product pricing information and changes together with copies of supplier invoices. These guidelines also spell out the conditions under which companies may receive one, two and three year licenses. The Ministry of Domestic Trade and Consumer Affairs has indicated that the local content targets originally articulated in 1998 are not mandatory, except for adherence to Malaysia's national equity policy supporting Bumiputra (ethnic Malay) participation in the economy.

Legal Services

Foreign lawyers may not practice Malaysian law or operate as foreign legal consultants, nor may they affiliate with local firms or use their international firm's name. Foreign law firms may not operate in Malaysia except as minority partners with local law firms, and their stake in any partnership is limited to 30 percent. Under the Legal Profession Act of 1976, the practice of Malaysian law is normally restricted to Malaysian citizens or permanent residents who have apprenticed with a Malaysian lawyer, are competent in Bahasa Malaysian (the official language), and have a local law degree or are an accredited British Barrister at Law. The Attorney General has authority to grant limited exceptions on a case-by-case basis, provided the applicant has seven years of legal experience. Malaysian lawyers are required to practice in partnerships or sole proprietorships. Malaysian law does not allow for foreign legal consultancy, except on a limited basis in the Labuan International Offshore Financial Center (see

"Banking" below). Persons not licensed as lawyers are subject to criminal penalties if they directly or indirectly undertake activities relating to the Malaysian legal system, including drafting documents.

Architectural Services

Foreign architectural firms can operate in Malaysia only as a joint venture on a specific project with the approval of the Board of Architects. Malaysian architectural firms may not have foreign architectural firms as registered partners. Foreign architects may not be licensed in Malaysia but are allowed to be managers, shareholders, or employees of Malaysian firms. Only licensed architects may submit architectural plans.

Engineering Services

Foreign engineers may be licensed by the Board of Engineers only for specific projects, and must be sponsored by the Malaysian company carrying out those projects. The license is only valid for the duration of a specific project. In general, foreign engineers must be registered as a professional engineer in his or her home country, have a minimum of 10 years experience, and have a physical presence in Malaysia of at least 180 days in one calendar year. To obtain temporary licensing for a foreign engineer, the Malaysian company must often demonstrate to the board that they cannot find a Malaysian engineer for the job. Foreign engineers are not allowed to operate independently of Malaysian partners, or serve as director or shareholder of a consulting engineering company. A foreign engineering firm can establish a non-temporary commercial presence if all directors and shareholders are Malaysian. Foreign engineering companies can collaborate with a Malaysian firm, but the Malaysian company is expected to design and required to submit the plans.

Accounting and Taxation Services

Foreign accounting firms can provide accounting and taxation services in Malaysia only through affiliates. All accountants who wish to provide auditing and taxation services in Malaysia must register with the Malaysian Institute of Accountants (MIA) before they can apply for a license from the Ministry of Finance. Citizenship or permanent residency is required for registration, and only degrees from local universities are recognized. Malaysian citizens or permanent residents who are members of at least one of the 11 recognized overseas professional bodies recognized by Commonwealth countries may also apply. However, more than a year ago the MIA indicated that it would consider whether to allow members of the American Institute of Certified Public Accountants (AICPA) to become members of the MIA and provide services in Malaysia, subject to Malaysian examination procedures. The Institute is still evaluating whether all AICPA members will be allowed to take the exam, or whether this will be restricted to only those AICPA members who are nationals or permanent residents of Malaysia.

Banking

No new licenses are being granted to either local or foreign banks; foreign banks must operate as locally controlled subsidiaries. Foreign-controlled companies are required to obtain 60 percent of their local credit from Malaysian banks. The Federal Territory of Labuan was established as an International Offshore Financial Center in October 1990. Foreign investors receive preferential tax treatment for offshore banking activities, trust and fund management, offshore insurance and offshore insurance-related businesses, and offshore investment holding business.

Insurance

Branches of foreign insurance companies were required to incorporate locally under Malaysian law by June 30, 1998, however the government has made individual extensions. Foreign share holding exceeding 49 percent is not permitted unless the Malaysian government approves higher shareholding levels. As part of the 1997 WTO Financial Services Agreement, Malaysia committed itself to allowing existing foreign shareholders of locally incorporated insurance companies to increase their shareholding to 51 percent. New entry by foreign insurance companies is limited to equity participation in locally incorporated insurance companies and aggregate foreign share in such companies may not exceed 30 percent.

Securities

Fund management companies may be 100 percent foreign owned if they provide services only to foreigners, but they are limited to 70 percent foreign ownership if they provide services to both foreign and local investors. Fifteen fund management companies, with foreign equity ranging from 10-100 percent, currently operate in Malaysia. Foreigners may hold up to 49 percent equity in a stockbroking firm. Currently there are 12 stockbroking firms that have foreign ownership, five futures booking companies, and 16 investment advisory companies.

Advertising

Foreign filmed content is restricted to a maximum of 20 percent per commercial, and only Malaysian actors may be used. The government of Malaysia has an informal and vague guideline that commercials cannot "promote a foreign lifestyle." Advertising of alcohol and cigarette products is severely restricted.

Audio-Visual and Broadcasting

The Malaysian government maintains broadcast content quotas on both radio and television programming. Eighty percent of television programming is required to originate from local production companies owned by ethnic Malays (an increase from the previous limit of 60 percent). However, in practice, local stations have been granted substantial latitude in programming due to a lack of local programming. Sixty percent of radio programming must be of local origin. The Communications and Multimedia Act of 1999, which calls on industry groups to establish content standards and could be the basis for modification of existing local content restrictions, transferred responsibility for regulating broadcasting from the Ministry of Information to the Ministry of Energy, Telecommunications, and Multimedia. Foreign investments in terrestrial broadcast networks are prohibited. As a condition for obtaining a license to operate, video rental establishments are required to have 30 percent local content in their inventories.

INVESTMENT BARRIERS

Malaysia encourages direct foreign investment particularly in export-oriented manufacturing and high technology industries, but retains considerable discretionary authority over individual investments. Especially in the case of investments aimed at the domestic market, the Malaysian government has used this authority to restrict foreign equity (normally to 30 percent) and to require foreign firms to enter into joint ventures with local partners. To alleviate the effects of the 1998-1999 economic downturn, Malaysia announced a temporary relaxation of foreign-ownership and export requirements in the manufacturing sector for those companies which do not directly compete with local producers. This incentive, which permits 100 percent foreign equity in manufacturing concerns, will remain available to investors until

December 31, 2000. Malaysia continues to suffer shortages of skilled and technical employees, particularly in the electronics sector. Firms also face restrictions on the number of expatriate workers they are allowed to employ.

Trade-Related Investment Measures

Malaysia in 1995 notified measures inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). These measures are local content requirements in the motor vehicle industry related to investment incentives. Proper notification allowed developing-country WTO members to maintain such measures for a five-year transitional period, ending January 1, 2000. In December 1999, Malaysia submitted a request to the WTO for a two-year extension to its transition period for its measures in the motor vehicle sector. The United States is working with other WTO Members on a case-by-case basis to review of all such TRIMS extension requests, in an effort to ensure that the individual needs of those countries that have made requests can be addressed. This process does not limit a Member's rights under the WTO Agreement. No decision has yet been reached on Malaysia's request.

ELECTRONIC COMMERCE

Malaysia currently applies no special restrictions on products or services traded via electronic commerce. Products which are ordered via the Internet and subsequently imported are subject to applicable import duties. Engineering services may not be provided via Internet unless the engineer is properly licensed.

OTHER BARRIERS

U.S. companies have indicated that they would welcome improvements in the transparency of Malaysian government decision-making and procedures, and limits on anti-competitive practices. A considerable proportion of government projects and procurement are awarded without transparent, competitive bidding. The Malaysian government has declared that it is committed to fighting corruption. To promote that objective, Malaysia maintains an Anti-Corruption Agency (ACA) which is part of the Office of the Prime Minister. The ACA has the independent power to conduct investigations and is able to prosecute cases with the approval of the Attorney General.